IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Sensa Verogna, Plaintiff,)
v.) Case #: **1:20-cv-00536-SM**
Twitter Inc., Defendant.)

MEMORANDUM IN SUPPORT OF PLAINTIFF'S RULE 52(b) OBJECTION TO THE COURTS' ORDER DENYING DEFENDANT'S DEFAULT

1. Generally, courts will reconsider a decision if a party can show new law, or a clear error in the Court's prior decision. *See, e.g., School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Hydranautics v. FilmTec Corp.*, 306 F.Supp. 2d 958, 968 (S.D.Cal. 2003). Ultimately, the decision on a motion for reconsideration lies in the Court's sound discretion. *Navajo Nation v. Norris*, 331 F.3d 1041, 1046 (9th Cir.2003) *(citing Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir.2000)). *See TEC Engineering Corp v Budget Molders Supply Inc*, 82 F3d 542,545 (1st Cir 1996).

2. The facts are that Plaintiff filed Complaint, [Doc.1], with 21 day follow up answer required by Fed. R. Civ. P. 12(a)(1)(A)(I). On the 21st day, an out of state attorney submitted to the court a pleading or brief, "Motion to Dismiss" [Doc.3]. The Plaintiff then moved the court [Doc. 7] to Default the Defendants who failed to secure pro hac vice for it's out of state attorney and therefore Doc. 3 is illegal and prohibited and therefore conforming [Doc. 7, attached Declaration @ 12]. The facts are indisputable as both parties agree that Attorney Schwartz was not so authorized to present anything the to the court on June 1, 2020. On June 1, 2020 Attorney Schwartz had not even asked the courts permission to appear on behalf of Twitter. [Doc. 7, attached

Declaration, attached Exhibit A, E-mail from Attorney Eck]. To this day, Attorney Schwarz is not authorized to practice law in this state or before this court, but continues to do so. [See Doc's. 9,10,11,17,18, 21, 22, 23, 24, 25, 26, 27]. The "Motion" and Memorandum [Doc. 3], are illegal and prohibited and therefore non-Conforming under Fed. R. Civ. P. 12(f), as scandalous material, [Doc. 7, Para 12]. and that by accepting the Motion, the Court to affixing an ex post facto imprimatur of approval of the unauthorized and prohibited practice of law in violation of N.H. RSA 311:7. [Doc. 25, Para 7]. Defendant has failed to plead or otherwise defend by June 1, 2020, in violation of Rule 12(a), 21 days, [Doc. 25, Para 7].

New Hampshire Law

3. New Hampshire's Statute 311:7 states; **"No person shall be permitted commonly to practice as an attorney in court unless he has been admitted by the court and taken the oath prescribed in RSA 311:6",** and is essentially unchanged since 1842. [1],[2], [3].

4. In New Hampshire there exists a strong public policy against the unauthorized practice of law. *See State v. Settle,* 124 N.H. 832, 835, 480 A.2d 6, 7 (1984) *(Settle I). Bilodeau v. Antal,* 123 N.H. 39, 43, 455 A.2d 1037, 1040 (1983), The only legislative authority for legal representation by anyone other than a duly licensed attorney is RSA 311:1, which provides that "[a] party in any cause or proceeding may appear, plead, prosecute or defend in his proper person or by any citizen of good character." We have interpreted the words "in his proper person" to mean pro se and to permit "self-representation by an individual. . . ." *State v. Settle, 129 N.H. 171, 176, 523 A.2d 124, 127 (1987) (Settle II). Knox Leasing v. Turner,* 132 N.H. 68, 72 (N.H. 1989).

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[1]The revised statutes of the State of New Hampshire passed December 23, 1842 : to which are prefixed the constitutions of the United States and of the State of New Hampshire https://archive.org/details/revisedstatuteso00newh/page/352/mode/2up

[2]The compiled statutes of the state of New Hampshire Publisher G.P. Lyon, 1854 https://archive.org/details/compiledstatute00hampgoog/page/n471/mode/2up

[3] The general statutes of the state of New-Hampshire : to which are prefixed the constitutions of the United States and of the state. Published, Manchester :J.B. Clarke, state printer,1867. https://babel.hathitrust.org/cgi/pt?id=nyp.33433009060181&view=1up&seq=434&q1=199

and in order to strengthen enforcement of this policy, the legislature enacted the statute relating to the unauthorized practice of law, granting the attorney general broad investigative powers. RSA 311:7-a to :7-f (Supp. 1981). *See State v. Settle*, 124 N.H. 832, (N.H. 1984); *N.H. JUDICIAL COUNCIL, ELEVENTH REPORT* 32 (1966); *Knox Leasing v. Turner*, 132 N.H. 68, (N.H. 1989). N.H. RSA 311:7 encompasses the filing of documents in the court system." *State v. Settle*, 124 N.H. 832, 837 (N.H. 1984) and that "No person shall be permitted commonly to practice as an attorney in court unless he has been admitted by the court and taken the [statutory] oath . . . ." (Emphasis added.) *See Bilodeau v. Antal*, 123 N.H. 39, 43 (N.H. 1983).

5. The New Hampshire Legislature has prohibited the unauthorized practice of law, RSA 311:7,[7] vesting enforcement of such prohibition in the New Hampshire Attorney General and the New Hampshire Bar Association. RSA 311:7-a;[8]. *State v. Settle*, 124 N.H. 832, *103 480 A.2d 6 (1984); *New Hampshire Bar Assoc. v. LaBelle,* 109 N.H. 184, 246 A.2d 826 (1968). "This concern for protecting the public interest is further reflected in DR 6-101(A)(1), which subjects to discipline any lawyer who undertakes a legal matter which he is incompetent to handle, without associating with a lawyer who is competent to handle the case." *Bilodeau v. Antal,* 123 N.H. 39, 43 (N.H. 1983).

6. The strong public policy against the unauthorized practice of law is embodied in the American Bar Association Code of Professional Responsibility, which this court formally adopted as the New Hampshire Code of Professional Responsibility on April 26, 1977. Disciplinary Rule 3-101(A) of the Code prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law. This rule reflects the ethical considerations listed under Canon 3, which are aimed at protecting the public against unqualified individuals rendering legal services.

7. It is uniformly held that many activities, such as appearing in court, writing and interpreting wills, contracts, trust agreements and the giving of legal advice in general, constitute practicing law. *See Ark. Bar Assoc. v. Union Nat'l Bank*, 224 Ark. 48, 53-54, 273 S.W.2d 408, 411-412 (1954). The "practice of law" is "providing professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law" when one does various enumerated acts, including "preparing or expressing legal opinions."

8. The word "shall" is "a command which requires mandatory enforcement" (quotation omitted)) *See William Bovaird v. New Hampshire Department of Administrative Services* (N.H. 2014); *McCarthy v. Wheeler*, 152 N.H. 643, 645 (2005) (considering the legislature's use of the word "shall" as a command, indicating a mandatory intent); *Zadvydas v Davis,* 533 US 678, 697-97 (2001) (contrasting "may" with "must"). But while "may" suggests discretion. In 2007 the U.S. Supreme Court said ("The word `shall' generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive"); Black's Law Dictionary 1375 (6th ed. 1990) ("As used in statutes ... this word is generally imperative or mandatory") *National Ass'n v. Defenders of Wildlife*, 127 S. Ct. 2518, 2531-2532 (US 2007).

9. Courts have held court filings by a person not authorized to practice law are a nullity. In *Preston v. University of Arkansas*, 354 Ark. 666, 128 S.W.3d 430, 437-38 (2003), the Arkansas Supreme Court held that a complaint filed by Oklahoma attorneys in Arkansas constituted unauthorized practice of law, and the complaint was "a nullity." *See also Shipe v. Hunter*, 280 Va. 480, 699 S.E.2d 519, 520 (2010) ("[A] pleading, signed only by a person acting in a representative capacity who is not licensed to practice law in Virginia, is a nullity."); *Carlson v. Workforce Safety & Ins.*, 765 N.W.2d 691, 704 (N.D. 2009) (concluding the filing of a request for reconsideration by nonresident attorneys from Ohio, not admitted to practice in North Dakota,

was void). Therefore the safe harbor of N.D.R. Prof. Conduct 5.5(A)(2) does not apply."; *Blume Constr., Inc. v. State*, 872 N.W.2d 312, 314, 316, 319, 320 (N.D. 2015) (holding that an appeal of an administrative ruling was void because the Colorado lawyer who signed on behalf of appellant had not taken any steps to be admitted pro hac in North Dakota).

10. So if New Hampshire has a strong policy against the unauthorized practice of law, why is the court willing to so accept Attorney Schwartz's Doc. 3 submittal? And, if F.R.C.P. Rule 55(a) directs that the clerk "must enter the parties default" or "the clerk shall enter a default" under Local Rule 55.1, and in the manner provided by Fed. R. Civ. P. 12, why has the clerk not carried out his directive and entered a default against Twitter? N.H. RSA 311:7 is clear, and the court must give effect to the intent of the law, that no one should appear "unauthorized" before a court in *New Hampshire. Miller v. French,* 530 U. S. 327, 336 (2000) (quoting *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195,215 (1962)). N.H. RSA 311:7 is so substantive that the federal court has to give it effect.[4]

Usurped State Law

11. The Court usurped the power of the governing state authority when it passed judgment contrary to the wisdom and efficacy of N.H. RSA 311:7. These are "extraordinary" errors. *See In re Volkswagen of Am.*, 545 F.3d 304, 305 (5th Cir. 2008).

12. The Court usurped the state's authority to craft unauthorized practice measures for attorneys and private individuals. But "[i]t is no part of the function of a court" to decide which measures are "likely to be the most effective for the protection of the public" *Jacobson v. Massachusetts*, 197 U.S. 30 (1905), usurping judicial power occurs when courts act beyond its

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[4] Byrd v. Blue Ridge Rural Elec. Coop., Inc., 356 U.S. 525, 535–36 (1958) (noting that a state rule may be so "bound up with the definition of the rights and obligations of the parties" that "its application in federal court is required").

jurisdiction or fails to act when it had a duty to do so. Will v. United States, 389 U.S. 90, 95 (1967).

13. The court's order threaten the separation of powers by 'embarrassing the Legislative arm of the New Hampshire Legislature. *See Maryland v. Soper (No. 1)*, 270 U.S. 9 (1926) intrusion by the federal judiciary on a delicate area of federal-state relations.'"

14. The court clearly abused its discretion by failing to apply (or even acknowledge) the framework governing unauthorized practice of law in New Hampshire Courts. This extraordinary error allowed the district court to create a blanket exception for unauthorized practice of law for the Defendants attorneys. This was a patently erroneous result.

15. The Order's result is patently wrong. Instead of applying New Hampshire State Law, the court wrongly abused its discretion, instead of applying N.H. RSA 311:7. The Order wrongly declared that the defendant had not violated New Hampshire law.

16. The Rules of Decision Act provided that in the absence of federal law, the "laws of the states" should govern. *See Swift v. Tyson*, 41 U.S. (16 Pet.) 1, 18 (1842) (*quoting Judiciary Act* of 1789, ch. 20, § 34, 1 Stat. 73, 92 (codified as amended at 28 U.S.C. § 1652 (2006)). If there is no federal law on point (and leaving aside the disagreements about whether there could be in various cases), a federal court must apply state law because that is the only law that could be operative. To state the principle more generally, constitutional Erie tells us that if only one law reaches the facts of a case, that law must supply the rule of decision. Erie also has some other propositions that sound constitutional in nature—for instance, that a state's law is what that state's courts say it is, not what someone else might think is a good idea. *See Erie*, 304 U.S. at 78 ("[W]hether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.").

17. A choice-of-law problem, to put it generally, arises when there is more than one sovereign whose law might create rights or obligations related to a particular event. *See* KERMIT ROOSEVELT, III, CONFLICT OF LAWS *1* (2010).

18. In this case, as there is only one law that reaches the facts of this case and the rights they create, the Court need not decide which of the competing rights will get priority. Only one law creates rights or obligations, that law will—indeed, must—supply the rule of decision. (setting out a two-step process of identifying interested states and resolving cases accordingly). Larry Kramer refined Currie's approach. *See Larry Kramer, Return of the Renvoi,* 66 N.Y.U. L. REV. 979, 982 (1991) (describing the two-step approach). Compare *Hanna v. Plumer,* 380 U.S. 460 (1965) (Federal Rule of Civil Procedure), with *Ragan v. Merchs. Transfer & Warehouse Co.*, 337 U.S. 530 (1949) (judge-made law).

19. The federal government has the power to preempt state law, of course, but a federal court exercising diversity jurisdiction does not purport to be exercising that power. *See, e.g., Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941) (holding that federal courts exercising diversity jurisdiction must apply state choice-of-law rules). The argument that state choice-of-law rules are substantive in this sense—so much a part of state-created rights that a court that ignores them is not really applying the law of that state—is both straightforward and strong.

20. The Courts' order denies the existence of general law N.H. RSA 311;7, and this law is the only law reaches the facts and thus must be the law to supply the rule of decision. *See Erie Railroad v. Tompkins,* 304 U.S. 64 (1938). See CHARLES ALAN WRIGHT & MARY KAY KANE, LAW OF FEDERAL COURTS § 55, at 378 (6th ed. 2002) ("It is impossible to overstate the importance of the Erie decision."); *Craig Green, Repressing Erie's Myth*, 96 CALIF. L. REV. 595, 595 (2008) (describing Erie as one of the "cultural pillars of our legal architecture"). States

have the power to set the scope of their laws; federal courts do not, and legislation rests with legislature, not judiciary.

Court Makes Its Own Law

21. According to one, the difference is purely between two different government functions, making legal rules and applying them. The Order denying default, creates a new law rather than interpreting the existing law as the court's duty is interpreting and not making law or making determinations of policy and morality that properly belong with legislators, (i.e. "legislating from the bench").

22. The Court failed to apply the law strictly and contrary to the facts present in this case, [5] failed to be constrained by widely agreed upon legal canons of construction. [6]

23. Judges engaged in this kind of decision making are really making law rather than judging it, because their work is creative, political and personal, rather than constrained, legal, and institutional.[7] At times, the charge that the courts are inappropriately engaged in rendering "substantive due process" [8], closely parallels these sorts of contentions about legislating from

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[5] SUNSTEIN, supra note 4, at 25; 147 CONG. REC. 102, S7991 (daily ed. July 20, 2001) (statement of Sen. Allen); 152 CONG. REC. 67, S5192 (daily ed. May 25, 2006) (statement of Sen. Specter); Charles Wood, Term Limits for Justices Are Rejected, MONT. LAW., Feb. 2003, at 9 (the Court "has embarked on an agenda of legislating from the bench, rather than adjudicating the facts and law.").

[6] Lavoie, supra note 60, at 616; Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. CHI. L. REV. 1175, 1176–79, 1182–83 (1989) (arguing that judges must apply general rules, formulated from legal texts, to advance legal equality, uniformity, and predictability).

[7] SUNSTEIN, supra note 4; CHRISTOPHER WOLFE, THE RISE OF MODERN JUDICIAL REVIEW: FROM CONSTITUTIONAL INTERPRETATION TO JUDGE-MADE LAW (1986) (discussing a "transitional" period beginning at the end of the nineteenth century in which the Supreme Court purportedly began to use personal preferences and will, in a manner reminiscent of legislators); E. Todd Wilkowski, The Defense of Marriage Act: Will It Be the Final Word in the Debate Over Legal Recognition of Same-Sex Unions? 8 REGENT U. L. REV. 195, 229 (1997). See also Justice Antonin Scalia, Comments at the Call for Reckoning Conference Session Three: Religion, Politics and the Death Penalty (Jan. 25, 2002) (stating that "my [C]ourt made up that requirement [that mitigating evidence be considered in the sentencing phase of death penalty cases]. . . . I don't think my Court is authorized to say, oh, it would be a good idea to have every jury be able to consider mitigating evidence and grant mercy. And, oh, it would be a good idea not to have mandatory death penalties.").

[8] See, e.g., Roe v. Wade, 410 U.S. 113, 178 (1973) (Rehnquist, J., dissenting) (arguing that the majority has enunciated "substantive constitutional law").

the bench.

24. Legislating from the bench is so obviously detrimental that many opponents dismiss it without elaboration. According to one scholar, "the whole idea [of our political scheme] is for the Court to avoid legislating." *See Beth, supra note 22*, at 19. Loren P. Beth, The Supreme Court and the Future of Judicial Review, 76 POL. SCI. Q. 11, 12 (1961).

25. But this Court is not a legislature. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution authorized courts to exercise "neither force nor will but merely judgment." *The Federalist No. 78*, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered); *Obergefell v. Hodges,* 576 U.S. 644 (2015) CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT No. 14–556. Argued April 28, 2015—Decided June 26, 2015*.

Violates Plaintiffs N.H. and US Constitution Rights under the Fifth Amendment

26. First, the district court ignored the framework governing unauthorized practice of law. Only "[U]nder the pressure of great dangers," may constitutional rights be reasonably restricted "as the safety of the general public may demand." *See Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 29 (1905).

27. Substantive law, we could say, creates rights that can be asserted in any forum.[9] substantive due process protects individuals against majoritarian policy enactments that exceed the limits of governmental authority. Procedural law creates rights that are tied to a particular forum and cannot be asserted elsewhere.[10] Procedural due process protects individuals from the

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[9] A tort claim, for instance, is uncontroversially substantive, and it should also be uncontroversial that a tort claim based on the law of one state can be asserted in the courts of another.

[10] The right to use a certain number of pages in a reply brief, for example, is uncontroversially procedural, and it is also pretty clear that one state's rule about permissible length will not govern litigation in the courts of another state.

coercive power of government by ensuring that adjudication processes, under valid laws, are fair and constitutional.

28. *Harlow v. Fitzgerald.* 457 U.S. 800, 818 (there can be no objective reasonableness where officials violate clearly established constitutional rights such as the Fifth Amendment Due Process and Equal Protections. The fifth amendment's due process clause prohibits arbitrary discrimination by the federal government. *See also Bolling v. Sharpe*, 347 U.S. 497 (1954).

29. *In Chicago, Burlington & Quincy Railroad Company v. City of Chicago* (1897), the court incorporated the Fifth Amendment's Takings Clause. In the middle of the Twentieth Century, a series of Supreme Court decisions found that the Due Process Clause "incorporated" most of the important elements of the Bill of Rights and made them applicable to the states. If a Bill of Rights guarantee is "incorporated" in the "due process" requirement of the Fourteenth Amendment, state and federal obligations are exactly the same.

30. Historically, the clause reflects the Magna Carta of Great Britain, King John's thirteenth century promise to his noblemen that he would act only in accordance with law ("legality") and that all would receive the ordinary processes (procedures) of law. It also echoes Great Britain's Seventeenth Century struggles for political and legal regularity, and the American colonies' strong insistence during the pre-Revolutionary period on observance of regular legal order. The requirement that government function in accordance with law is, in itself, ample basis for understanding the stress given these words. A commitment to legality is at the heart of all advanced legal systems, and the Due Process Clause often thought to embody that commitment.

31. The clause also promises that before depriving a citizen of life, liberty or property, government must follow fair procedures. Thus, it is not always enough for the government just to act in accordance with whatever law there may happen to be. Citizens may also be entitled to have

the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due" would be unconstitutional. Suppose, for example, state law gives students a right to a public education, but doesn't say anything about discipline. Before the state could take that right away from a student, by expelling her for misbehavior, it would have to provide fair procedures, i.e. "due process."

32. The Constitution does not require "due process" for establishing laws; the provision applies when the state acts against individuals "in each case upon individual grounds" — when some characteristic unique to the citizen is involved. Of course there may be a lot of citizens affected; the issue is whether assessing the effect depends "in each case upon individual grounds." *See Bi-Metallic Investment Co. v. State Board of Equalization* (1915). What the Constitution required would inevitably be dependent on the situation. What process is "due" is a question to which there cannot be a single answer. *See Goldberg v. Kelly*, 397 U.S. 254 (1970).

33. First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

34. The phrase due process, must include "equal protection of the laws." The Fifth Amendment requires due process when the federal government is acting to take away the Plaintiff's liberty. "Liberty under law extends to the full range of conduct which the individual is free to pursue." Any legal conduct, such as going to school, is part of this constitutionally protected

liberty. Thus the government cannot restrict going to school--or any other personal conduct--without a "proper" objective. *See Bolling v. Sharpe*, 347 U.S. at 499 347 U.S. 497, 499–500 (1954).

35. Equal Protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. It places strict limits on the government's ability to infringe fundamental constitutional rights of all classes of persons. And it requires that all government actions be rationally related to legitimate purposes.

36. The court's decision is not related to any proper governmental objective, and thus it imposes on Pro Se litigants, such as the Plaintiff, a burden that constitutes an arbitrary deprivation of the Plaintiffs liberty in violation of the Due Process Clause.

37. Even if the courts action is facially neutral, it still should be subject to equal protection scrutiny if it has the effect of distributing burdens and benefits unequally. *E.g., Shapiro v. Thompson.* 394 U.S. 618 (1969) (durational residency requirement has the effect of dividing applicants into two classes); *Harper v. Virginia Bd. of Elecs.*, 383 U.S. 663 (1966) (poll tax has the effect of dividing potential voters into two classes). The court's order produced an unequal effect.

38. The theory that was to prevail seems first to have been enunciated by Chief Justice Taft, who observed that the Due Process and Equal Protection Clauses are associated and that [i]t may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not coterminous. . . . [Due process] tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. *See Truax v. Corrigan*, 257 U.S. 312, 331 (1921); See also *Hirabayashi v. United States*, 320

U.S. 81, 100 (1943). The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination. Page 257 U. S. 333 *Truax v. Corrigan*, 257 U.S. 312, 331 (1921). "Class legislation, discriminating against some and favoring others, is prohibited, P. 257 U. S. 332. *Truax* at 312 and 331. Thus, the guaranty was intended to secure equality of protection not only for all, but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class.

39. U.S. and New Hampshire citizens should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid on others in the same calling and condition. *Truax v. Corrigan*, 257 U.S. 312, 331 (1921).

40. The Courts determination that Twitter is not in default violates Plaintiff's liberty rights to 'equal protection of the laws' and also violates Plaintiff's due process rights as it is so unjustifiable and without a governmental objective as it does not follow New Hampshire's RSA 311:7 which is intended to prevent anyone from the unauthorized practice of law in a court located in New Hampshire. *See Bolling v. Sharpe*, 347 U.S. at 499 347 U.S. 497, 499–500 (1954). The guaranty of "equal protection" entitles plaintiffs to treatment not less favorable than that given to others similarly circumstanced. This the present statute gives them. denies to them the equal

protection of the laws within the meaning of the Fourteenth Amendment. *See Truax v. Corrigan,* 257 U.S. 312, 331 (1921). Or as in this case the Fifth Amendment.

41. "Our whole system of law is predicated on the general fundamental principle of equality of application for the law. 'All men are equal before the law,' "This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute and apply laws. But the framers and adopters of the (Fourteenth) Amendment were not content to depend ... upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty." *See Truax v. Corrigan*, 257 U.S. 312, 332 (1921).

42. The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law -- a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. *See Hurtado v. California,* 110 U. S. 516, 110 U. S. 535 (1884). It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. "All men are equal before the law," "This is a government of laws and not of men," "No man is above the law," are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute, and apply laws. But the framers and adopters of this amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They

therefore embodied that spirit in a specific guaranty which sought an equality of treatment or the oppression of inequality of all persons, even though all enjoyed the protection of due process.

43. The equal protection clause was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other; it secures equality of protection not only for all, but against all, similarly situated; it is a pledge of the protection of equal laws. Mr. Justice Field, delivering the opinion of this Court in *Barbier v. Connolly,* 113 U. S. 27, 113 U. S. 32 (1885).

44. The Order violates Plaintiff's equal protection substantive rights to redress his actionable injuries as it fails to guard against arbitrary and discriminatory infringements of basic equal protection without discrimination. N.H. CONST. pt. 1, art. 14." *Opinion of the Justices,* 137 N.H. 260, 261 (N.H. 1993).

45. The trial court may properly act to prevent a person, such as an attorney unauthorized to practice law, from acting "commonly" as legal counsel when it reasonably appears that to do otherwise would be to sanction the unauthorized practice of law. *See Bilodeau v. Antal,* 123 N.H. 39, (N.H. 1983).

46. The Oder not only violated Plaintiffs due process of Law, but denied equal protection under the law. While a Judge performing Judicial functions may enjoy Immunity, denial of constitutional and civil rights are absolutely not a judicial function and conflicts with any definition of a Judicial function. Response to denials were Motions to reinstate using the Constitutional Articles as a major Guide, along with the Judges Oath of Office, and canons of Judicial Code of Conduct. The responses also included page after page of case law where both appellate courts and the Supreme Court did hold judges accountable when their knowing and willing actions fell outside the boundaries of their job description. That failure to follow simple guidelines of their post makes

a judge's action no longer a Judicial act but an Individual act as the act represents their own prejudices and goals. Case Law also states that when a judge acts as a trespasser of the law, when a judge does not follow the law, he then loses subject matter jurisdiction and the Judges orders are void, of no legal force or affect. In a limited government, a government limited by the constitution, the violation of a citizens rights should never be justified due to the overriding government goals or objectives, and that no branch of the government be allowed to extend its power beyond it's legal limits.

47. No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it. *See United States v. Lee*, 106 U.S. 196,220, 1 S.Ct. 240, 27 L.Ed. 171 (1882); *Buckles v. King County*, 191 F.3d 1127, *1133 (C.A.9 (Wash.), (1999)).

48. The Eleventh Amendment was not intended to afford [judges] freedom from liability in any case where; under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law unless they are to be put above the law. See *OLD COLONY TRUST COMPANY v. CITY SEATTLE ET AL.* (06/01/26) 271 U.S. 426, 46 S.Ct. 552, 70 L. Ed at page 431. No officer of the law may set that law at defiance with impunity. See United States v. Lee, 106 U.S. 196,220 and *Burton v. United States*, 202U.S. 344. The Court in *Yates v. Village of Hoffman Estates,* Illinois, 209 F. Supp. 757 (N.D. Ill. 1962), held that "not every action by a judge is in the exercise of his judicial function. . . . it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse.

When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect."

49. "No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." *Butz v. Economou*, 98 S. Ct. 2-894(197-8); *United States v: Lee,* 106- U.S. at 220, 1 S. Ct. at 261 (1882). Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. *Cannon v. Commission on Judicial Qualifications*, (1975) 14 Cal. 3d 678, 694. Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. *Gonzalez v. Commission on Judicial Performance* 33 Cal.3d 359 , 188 Cal. Rptr. 880; 657 P.2d 372, (1983). "The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury." *See Owen v. City of Independence*, 445 U.S. 622 (1980).

50. When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. *See U.S. Fidelity & Guaranty Co.* (State use of), 217 Miss. 576, 64 So. 2d 697. *See also, Elliot v. Piersol,* 1 Pet. 328,340, 26 U.S. 328, 340 (1828). By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person). When a judge acts as a trespasser of the law, when a judge does not follow the law, the Judge loses subject-matter jurisdiction and the judges' orders are not voidable, but VOID, and of no legal force or effect. *See Scheuer v. Rhodes*, 416 U.S. 23 94 S. Ct.1683, 1687 (1974).

51. Under federal Law, which is applicable to all states, the U.S. Supreme Court stated that "if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers." "Federal tort law provides that judges cannot invoke judicial immunity for -acts--that violate litigants-civil-rights; *Robert-Craig-Waters. Tort & Insurance Law Journal*, Spr. 1986 21 n3, p509-516. [11]

52. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws when he receives an injury." *See Marbury v. Madison*, 5 US (1 Cranch) 137 (1803). "An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *See Kazubowski v. Kazubowski*, 45 Ill.2d 405,259, N.E.2d 282, 290." Black's Law Dictionary, 6th Edition, page 500. "Aside from all else, 'due process' means fundamental fairness and substantial justice. *Vaughn v. State*, 3 Tenn.Crim.App. 54,456 S.W.2d 879, 883." Black's Law Dictionary, 6th Edition, page 500. Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." *See Duncan v. Missouri*, 152 U.S. 377,382 (1894).

53. Undoubtedly it (the Fourteenth Amendment) protects against any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances

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[11] Tort & Insurance Law Journal, Spring 1986 21 n3, p 509-516, "Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants' civil rights." - Robert Craig Waters. See also Cooper v. Aaron, 358 US. I, 78 S. Ct. 1401 (1958)

in the enjoyment of their rights ... It is enough that there is no discrimination in favor of one as against another of the same class. . .. And due process of law within the meaning of the [Fifth and Fourteenth] amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." *See Giozza v. Tiernan.* 148 U.S. 436 (1893).

54. Therefore, Judges are bound by the Constitution, and a paragraph in a U.S. Code does not relieve a Judge of this duty or allow for unconstitutional judgments to stand.

55. For the purposes of review, it has been said that clear violations of laws on reaching the result, such as acting without evidence when evidence is required, or making a decision contrary to all the evidence, are just as much jurisdictional error as is the failure to take proper steps to acquire jurisdiction at the beginning of the proceeding. *See Borgnis v. Falk Co.*, 147 Wis. 327, 133 N.W. 209 (1911) Without jurisdiction, the acts or judgments of the court are void and open to collateral attack. *See McLean v. Jephson*, 25 N.E. 409, 123 (NY 1890).

56. Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. " *See Elliot v. Piersol*, I Pet. 328, 340, 26 U.S. 328, 340 (1828). When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judge's orders are void, of no legal force or effect.

57. The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in

that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." [Emphasis supplied in original]. By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person).

58. The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." [12]

Clear Error and Abuse of Discretion

59. The Order misinterprets the law, misapplies it to the facts, or otherwise engaged in a clear abuse of discretion." In *re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 290 (5th Cir. 2015), that produced a patently erroneous result bestowing on the Defendant a blanket exemption to practice unauthorized law.

60. The Courts Order disregarded and abuses Federal Rules and its own Rules, by "so permitting an unauthorized attorney to practice before this Court" as no member of the bar of this court had motioned the court on her behalf prior to her submittal, formally started the application procedure for admission; sought nor received this Courts approval to appear pro hac vice; paid any fees; taken any oath under Local Rule 83.1(b); 5), Nor motioned this court for a special admission under Local Rule 83.1(d), disregarded and failed to mandatorily enforce Local Rule 55.1(a) and Fed. R. Civ. P. 55 in not declaring the Defendant in Default, and arbitrarily and contrary to law

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[12] Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. The U.S. Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also *In Re Sawyer,* 124 U.S. 200 (188); *U.S. v. Will,* 449 U.S. 200,216, IOI S. Ct. 471, 66 L. Ed. 2d 392,406 (1980); *Cohens* v. *Virginia,* 19 U.S. (6 Wheat) 264, 404, 5 L. Ed 257 (1821). Pulliam v. Allen, 466 U.S. 522 (1984); 104 S. Ct. 1781, 1980, 1981, and 1985.

accepted a pleading not in compliance with Fed. R. Civ. P. 12, as the pleading is illegal and prohibited by law and thus non-conforming and that a proper answer under Fed. R. Civ. P. 12 had not been received by the Court within the 21 days required. See [Doc. 7].

61. The Courts Order disregarded Judicial Cannons of obeying the law and fair play and ignored established Federal case law, which in this case is "clear and indisputable" because it does not "followed numerous others" [courts] who had made the same decision. *See In re Volkswagen of Am.*, 545 F.3d 304, 305 (5th Cir. 2008); See also Bilodeau v. Antal, 123 N.H. 39, (N.H. 1983) In ex rel. Courtney v. Association of Real Estate Tax-payers, 354 Ill. 102,. 187 N.E. 823 (1933), a nonprofit corporation was held in contempt for engaging in the unauthorized practice of law; *People ex rel. Courtney v. Association of Real Estate Taxpayers* 354 Ill. 102, 187 N.E. 823(1933) (Stating that the practice of law includes "the preparation of pleadings," "the management of actions," and "in general, all advice to clients"); Similarly, in *Allstate Insurance Co. v. West Virginia State Bar*, 233 F.3d 813 (4th Cir. 2000), the Fourth Circuit affirmed a West Virginia state legal disciplinary tribunal had ruled against Allstate for engaging in the unauthorized practice of law; *Davis v. Marcotte*, 193 Ohio App.3d 102, 2011-Ohio1189, 951 N.E.2d 117, ¶8 (10th Dist.); *Cleveland Bar Assn. v. Moore*, 87 Ohio St.3d 583, 584, 722 N.E.2d 514 (2000), "detracts from the dignity of the court." See 2A Moore's Federal Practice ¶ 12.21 at p. 2426 (1983) (footnotes omitted); *Skadegaard v. Farrell*, 578 F. Supp. 1209 (D.N.J. 1984) US District Court for the District of New Jersey - 578 F. Supp. 1209 (D.N.J. 1984).

62. The Courts Order ignored and usurped New Hampshire law and its strong policy regarding the unauthorized practice of law which left no room for any judicial discretion. Where a trial court must exercise discretion in deciding a question, it must do so in a way that is not clearly against logic and the evidence. An improvident exercise of discretion is an error of law and grounds

for reversing a decision on appeal. It does not, however, necessarily amount to bad faith, intentional wrong, or misconduct by the trial judge. Plaintiff has a "definite and firm conviction that a mistake has been committed." *See Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 (1982); (relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *See Richardson v. Perales*, 402 U.S. 389, 401 (1971).

63. The Courts Order did not adhere to the controlling standards established by the Rules of Decision Act. As the Supreme Court put it later in *Byrd v. Blue Ridge Rural Electric Cooperative*, "[F]ederal courts . . . must respect the definition of state-created rights and obligations by the state courts." 356 U.S. 525, 535 (1958).

64. The Courts Order creates a new law rather than interpreting the existing law and cannot be related to any proper governmental objective as the objective of the New Hampshire Legislature is to forbid the unauthorized practice of law within Courts in this state by any one of any class. As it stands and has stood for nearly 200 years, N.H. RSA 311:7 is not discriminatory against any one type of class or person. The Courts Order injects discrimination in its reading of the law and thereby establishing new (case) law that it is NOT unauthorized practice of law IF you are of the Attorney Class, but would be if you were a non-attorney.

65. The Courts Order, arbitrarily, based on a personal whim, rather than any reason or system, failed to apply the law strictly and contrary to the facts present in this case. Judicial discretion is not to be exercised at the arbitrary will of the judge and not invoked arbitrarily or against logic and the effect of facts. *See Neal v. State*, 214 Ind. 328, 14 N. E. (2d) 590, 593 (1938), and not applied against reasonable, probable and actual deductions; *McFarland v. Fowler Bank*, 214 Ind. 10, 12 N. E. (2d) 752 (1938) and are not employed to defeat the ends of justice. *Deeds v. Deeds*, 108 Kan. 770, 196 Pac. 1109 (1921), "discretion to be expressed in discerning the course

prescribed by law."; *Osborn v. Bank of the United States*, 22 U.S. 738 (1824) ("clearly against reason and evidence" or against established law) an error of judgment by a trial court in making a ruling that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the law applicable in the case — compare clearly erroneous.

66. The Courts Order violated the Plaintiffs substantive due process rights by exceeding its judicial authority. Additionally this Court is allowing the Defendants counsel Attorney Schwartz to continue representing her corporate Defendant, Twitter when she is still unauthorized to do so under New Hampshire Law.

67. The Courts Order violated the Plaintiffs procedural due process rights by failing to ensure that the adjudication process, under valid laws and rules, was fair and impartial and in violation of the Plaintiff's State and Federal Constitutional Fifth Amendments Rights to due process whereby expanding the liberty of the Defendant and their "Attorney Class" at the expense of the Pro Se Plaintiff's liberty (e.g. as in the *Dred Scott case*).

68. The Courts Order failed to equal protect the "Non-professional" Plaintiff and in favor of the "Professional" class of Attorneys in violation of the Plaintiff's State and Federal Constitutional Fifth Amendments Rights as it denies the Plaintiff equal protection of the laws (which clearly New Hampshire Law was intended to accomplish with statute 311:7) whereby expanding the liberty and protection of the Defendant and their "Attorney Class" at the expense of the Pro Se Plaintiff's liberty and protections. (e.g. as in the Dred Scott case). Is the Court abolishing the law? Or abolishing it under Federal Law? Or is it just not applying it in the Plaintiff's case?

69. The Courts Order unjustly protects the Defendant Twitter, Inc, who according to Forbes is worth $4.9 billion, its New Hampshire Attorney, Jonathan M. Eck, who has extensive involvement specifically with this Court and Attorney Julie E. Schwartz, who failed to motion or

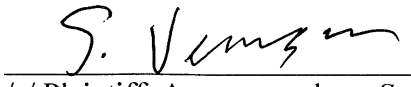
alert the Court prior to her submittal, failed to amend or otherwise remove and replace the submittal after being alerted of its illegality, and continues to represent the Defendant Twitter when she is not so authorized under New Hampshire Law to do so.

70. In Conclusion , the Plaintiff does pray that this Court observe the practice of fundamental fairness that is substantial justice and not act as bystanders while a New Hampshire and U.S. citizen is denied the right to redress his liberties while due process rights and equal protections have been denied under color of law.

71. The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1582 (11th Cir. 1992); *See also, United States v. Miller,* 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); *Poling v. K. Hovnanian Enterprises,* 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

WHEREFORE, the Plaintiff, prays that the Court amend its findings and/or make additional findings to prevent a manifest injustice and amend the judgment accordingly and find the Defendant in Default as the Court's previous Order is clearly erroneous and contrary to law.

Respectfully,



/s/ Plaintiff, Anonymously as Sensa Verogna
SensaVerogna@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July 2020, the foregoing document was made upon the Defendant, through its attorneys of record to Jonathan M. Eck jeck@orr-reno.com and Julie E. Schwartz, Esq., JSchwartz@perkinscoie.com